

04/03/01

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 23  
EJS

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re **Manhattan Scientifics, Inc.**

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Serial No. 75/478,091

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Request for Reconsideration

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**James C. Wray** for Manhattan Scientifics, Inc.

**Heather D. Thompson**, Trademark Examining Attorney, Law  
Office 103 (Michael A. Szoke, Managing Attorney).

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Before Seeherman, Walters and Holtzman, Administrative  
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

On February 12, 2001, Manhattan Scientifics, Inc.  
filed a request for reconsideration of the Board's  
January 12, 2001 decision affirming, inter alia, the  
Examining Attorney's refusal of registration of GREEN CELL  
on the ground that it is merely descriptive of applicant's  
identified goods. Applicant asserts that the Board  
incorrectly dissected the two words of the mark in reaching  
its decision that the mark is merely descriptive.

As the Board pointed out in its January 12, 2001 decision, the evidence of record shows that the word GREEN indicates that a product is environmentally friendly. Moreover, at the oral hearing applicant's attorney conceded that the two individual words of the mark are descriptive, green meaning "environmentally friendly" and "cell" being an equivalent term for a fuel cell.

Despite this, applicant took the position during the prosecution of its application, and continues to assert in its request for reconsideration, that the mark as a whole is not merely descriptive. As we previously stated in our January 12, 2001 decision, we are not persuaded by this argument. "The two words, combined as the mark GREEN CELL, immediately tell consumers that the product is an environmentally friendly (GREEN) fuel cell." Slip opinion, p. 10. Contrary to applicant's contention, we have not dissected the mark into its two separate words, determined that each is individually descriptive, and based our finding of descriptiveness on the individual words alone. Rather, it is the combination, GREEN CELL, which we have found to immediately convey to purchasers that the fuel cell with which the mark is used is an environmentally friendly cell. As such, the mark GREEN CELL is merely descriptive of the goods.

We would also point out that **Estate of P.D. Beckwith Inc. v. Commissioner of Patents**, 252 US 538, 40 S. Ct. 414 (1920), upon which applicant relies, made the statements that "the commercial impression of a trade-mark is derived from it as a whole" and "it should be considered in its entirety" in the context of whether it was appropriate to require an applicant to delete a descriptive phrase (MOISTAIR HEATING SYSTEM) from a composite mark rather than simply requiring a disclaimer of it. This case, which was decided in 1920, involved an interpretation of Patent Office policies under the 1905 Trademark Act. In any event, as we have already stated, our determination that GREEN CELL is merely descriptive is based on a consideration of the mark as a whole.

The request for reconsideration is denied.

It is also noted that on February 12, 2001 applicant filed a petition to the Commission to reopen prosecution of the application. The application file is hereby forwarded to the Commissioner for appropriate action.<sup>1</sup>

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<sup>1</sup> It is noted that applicant has not submitted the requisite fee for filing a petition to the Commissioner.